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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,645	03/07/2001	Troy Michael Runge	16,670	5221
23556	7590	07/24/2003		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
			EXAMINER HALPERN, MARK	
			ART UNIT 1731	PAPER NUMBER

DATE MAILED: 07/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/800,645	RUNGE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Halpern	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8-19,22-33 and 35-76 is/are pending in the application.
- 4a) Of the above claim(s) 35-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-19,22-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

- 1) Acknowledgement is made of Response received 7/2/2003.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 2) Claims 4-6, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 5 recite the limitation "said dewatered fibrous web" in line 1. There is insufficient antecedent basis for this limitation in the claims.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 3) Claims 1-6, 8-19, 22-33, are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns (6,379,498) in view of Graef (4,853,086).

Claims 1, 4-5, 22, 25: Burns discloses a process for chemically treatment of pulp fiber which includes the steps of creating slurry 10 of pulp fiber and water (Burns, col. 7,

lines 40-45), transporting said slurry to headbox 28 from where the fiber slurry is deposited into a fourdrinier section 30 forming a wet fibrous web 32 (Burns, col. 8, lines 28-32). The water is removed by mechanical pressure and other means, and then the formed web is dried in a dryer section 34. The dried fibrous web has retention of between 10 and 100 percent of the chemical additives upon dewatering (Burns, col. 3, line 54, to col. 4, line 24). Burns discloses that chemical are added in the process creating a fibrous web containing chemically treated pulp fibers, however, Burns fails to disclose that the chemicals are added after the web has been dried. Graef discloses a method of making a fibrous product, in which a partially dried web is treated with chemical additives (Abstract). It would have been obvious, to one skilled in the art at the time the invention was made, to combine the teachings of Burns and Graef, because such a combination would improve the absorbency of the product of Burns as disclosed by Graef (Abstract).

Claims 2, 14, 23, 27: Burns discloses that the fibrous web containing chemically treated pulp fibers is transported to paper machine 38 where it is mixed with water to form slurry containing the chemical additives 40, and then processed to make finished paper product 42 (Burns, col. 8, lines 57-67).

Claims 3, 6, 24, 26: Graef discloses that the chemicals are spray applied continuously onto a moving sheet, the spray being uniform and evenly applied over the sheet (col. 5, lines 60-68). This reads on a gradient and a z-directional gradient of the chemical additives.

Claims 8-10, 33: softening agents are disclosed (Burns, col. 8, lines 5-10).

Claims 11-13: Graef discloses glycol and glyoxal compounds that act as absorbency and strength agents (col. 7, lines 26-55, and col. 2, lines 25-29).

Claims 15, 29: the chemical additive is applied in the amount of 0.1 kg/metric ton (Burns, col. 8, lines 5-10). Unretained chemical additive is the opposite of the amount of chemicals retained, thus it is in the range of 100 to 10 percent (Burns, cols. 3-4).

Claims 16-17: the final product of the process is of about 3-12 % moisture (Graef, Example 1, col. 5, lines 50-55), which calculates to a consistency between about 88 and about 97 percent.

Claim 18: sufficient time is being disclosed for the chemical addition into the web fibers (Graef, col. 5, lines 38-55).

Claim 19: paper and tissue formation is disclosed (Burns, col. 8, lines 63-65).

Claim 28: enhanced quality of the product is disclosed by Burns in the Abstract.

Claim 30: the chemical additive is applied in the amount of 1.0 kg/metric ton (Burns, col. 3, lines 45-55).

Claims 31-32: the chemical additive is applied in the amount of 2.0 kg/metric ton or greater (Burns, col. 3, lines 45-55). This reads on the claimed range of additives of "about 3" and "about 5 kg/metric ton".

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4) Claims 1, 22, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,582,560. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 22, of the present application differs from claim 1 of patent 6,582,560, in part (d) only, in that in the patent, the chemical additive is recited as "water insoluble", and in the copending application, the chemical retention rate is from "25 to about 100 percent" vs. "10 to about 100 percent" in the present application.

#### ***Response to Amendment***

5) Claims 1-2, 4-5, 8-19, 22-23, 25, 27-33, rejection under 35 U.S.C. 102(b) as being anticipated by Graef (4,853,086), is withdrawn in view of applicant's arguments and in view further search of art in prior art.

6) Claims 3, 6, 24, 26, rejection under 35 U.S.C. 103(a) as being unpatentable over Graef, is withdrawn in view of applicant's arguments and in view of further search of art in prior art.

***Conclusion***

7) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 703-305-4522. The examiner can normally be reached on Mon-Fri, (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Mark Halpern  
Patent Examiner  
Art Unit 1731

November 17, 2003